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United Nations

Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Eleventh session
(12-16 October 2009)

Twelfth session
(26-30 April 2010)

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Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[27 July 2010]

Contents

Chapter		Paragraphs	Page
I.	Organizational and other matters	1–26	1
	A. States parties to the Convention	1	1
	B. Meetings and sessions	2–4	1
	C. Membership and attendance	5–7	1
	D. Solemn declaration	8	1
	E. Election of officers	9	2
	F. Future meetings of the Committee	10–11	2
	G. Participation in inter-committee meeting and working groups	12–13	2
	H. Day of general discussion	14–16	2
	I. Promotion of the Convention	17–24	3
	J. Adoption of the report	25–26	4
II.	Cooperation with bodies concerned	27–28	4
III.	Reports by States parties under article 73 of the Convention	29	4
IV.	Consideration of reports by States parties in accordance with article 74 of the Convention	30–31	4
	Algeria	30	4
	Sri Lanka	31	10

Annexes

I.	States that have signed, ratified or acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as at 31 March 2010	19
II.	Membership of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families	21
III.	Submission of reports by States parties under article 73 of the Convention as at 1 May 2010	22
IV.	List of documents issued or to be issued in connection with the eleventh and twelfth sessions of the Committee	24
V.	Report of the day of general discussion on migrant domestic workers	25
VI.	States parties that submitted comments on the concluding observations adopted by the Committee	34

I. Organizational and other matters

A. States parties to the Convention

1. On 30 April 2010, the closing date of the twelfth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, there were 42 States parties to the International Convention on the Rights of All Migrant Workers and Members of Their Families. The Convention was adopted by the General Assembly in resolution 45/158 of 18 December 1990 and entered into force on 1 July 2003, in accordance with the provisions of its article 87, paragraph 1. A list of States that have signed, ratified or acceded to the Convention is contained in annex I to the present report.

B. Meetings and sessions

2. The Committee held its eleventh session at the United Nations Office at Geneva from 12 to 16 October 2009. The Committee held nine plenary meetings (CMW/C/SR.118-126). The provisional agenda, contained in document CMW/C/11/1, was adopted by the Committee at its 118th meeting, on 12 October 2009.

3. The Committee held its twelfth session at the United Nations Office at Geneva from 26 to 30 April 2010. The Committee held 10 plenary meetings (CMW/C/SR.127-136). The provisional agenda, contained in document CMW/C/12/1, was adopted by the Committee at its 127th meeting, on 26 April 2010.

4. The list of documents issued or to be issued in connection with the eleventh and twelfth sessions of the Committee is given in annex IV.

C. Membership and attendance

5. All members of the Committee, with the exception of Mr. Alba and Mr. Kariyawasam, attended the eleventh session of the Committee.

6. Following the entry into force of the Convention for the forty-first State party on 1 July 2009, the membership of the Committee was expanded from 10 to 14 members, in accordance with article 72, paragraph 1 (b), of the Convention. All members of the Committee attended the twelfth session of the Committee, with the exception of Mr. Kariyawasam and Mr. Taghizade.

7. The list of the members of the Committee, together with an indication of the duration of their terms of office, appears in annex II to the present report.

D. Solemn declaration

8. At the opening of the 127th meeting (twelfth session), on 26 April 2010, newly elected members Mr. Francisco Carrion Mena, Ms. Fatoumata Abdourhamana Dicko, Mr. Miguel Ángel Ibarra Gonzalez, Ms. Andrea Miller-Stennett and

Mr. Ahmadou Tall made the solemn declaration in accordance with rule 11 of the Committee's provisional rules of procedure.

E. Election of officers

9. Also at its 127th meeting, the Committee elected the following officers for a term of two years, in accordance with rule 12 of its provisional rules of procedure:

Chairperson:	Abdelhamid El Jamri
Vice-Chairpersons:	Jose Brillantes Ana Elizabeth Cubias Medina Azad Taghizade
Rapporteur:	Ahmed Hassan El-Borai

F. Future meetings of the Committee

10. The Committee welcomes the authorization by the General Assembly that enables it to hold two sessions per year, one of two weeks and one of one week. In order to fulfil its functions more effectively, it decided to have, during 2010, a one-week session in the spring and a two-week session in the autumn. This will allow the Committee to examine the initial reports of Albania and Senegal and the second periodic report of Ecuador during 2010.

11. The Committee's thirteenth session will be held from 22 November to 3 December 2010 at the United Nations Office at Geneva.

G. Participation in inter-committee meeting and working groups

12. Mr. El Jamri and Ms. Poussi represented the Committee at the ninth inter-committee meeting, which was held from 29 June to 1 July 2009. Chairperson El Jamri participated in the twenty-first meeting of chairpersons of the human rights treaty bodies, which took place on 2 and 3 July 2009. Mr. El Jamri, Mr. Sevim and Mr. Taghizade represented the Committee at the tenth inter-committee meeting, which was held from 30 November to 2 December 2009.

13. The Committee designated Mr. El-Borai to participate in the eleventh inter-committee meeting, to be held from 28 to 30 June 2010.

H. Day of general discussion

14. On 14 October 2009 (122nd and 123rd meeting, eleventh session), the Committee held a day of general discussion on migrant domestic workers. The day aimed at, inter alia, providing input specific to domestic workers who are migrants for the debate at the ninety-ninth session of the International Labour Conference in 2010 which will discuss "Decent Work for Domestic Workers" and consider the adoption of a new International Labour Organization (ILO) instrument on domestic workers by 2011. More generally, the Committee intended to promote greater awareness of the particular situation and rights of migrant domestic workers,

including at international forums such as the Global Forum on Migration and Development.

15. The day of discussion was attended by around fifty participants, the majority from civil society groups, national (from Bahrain, Israel, Italy, Lebanon, the Netherlands and Senegal), regional (Africa and Asia) and international. International organizations and representatives from permanent missions to the United Nations Office at Geneva also participated. The report of the day of general discussion is contained in annex V to this report. The written contributions to the Committee's discussion can be found on the webpage of the Committee: http://www2.ohchr.org/english/bodies/cmw/dgd141009.htm.

16. Following the day of general discussion, the Committee decided to consider the adoption of a general comment on migrant domestic workers. A first draft of such general comment was discussed on 28 and 29 April (131st and 133rd meetings, twelfth session) in private meetings. The Committee plans to continue its discussion on, and possibly adopt, the general comment at its thirteenth session.

I. Promotion of the Convention

17. Chairperson El Jamri represented the Committee at the third Global Forum on Migration and Development, which was hosted by the Government of Greece and took place on 4 and 5 November 2009.

18. Chairperson El Jamri participated in the panel discussion on human rights of migrants in detention centres, held during the twelfth session of the Human Rights Council, on 17 September 2009.

19. Chairperson El Jamri participated in the expert seminar organized by the Office of the High Commissioner for Human Rights on Linking Human Rights and Migrant Empowerment for Development, held in Geneva on 22 September 2009.

20. Ms. Cubias Media participated in the VI Central American Congress on HIV/AIDS and Sexually Transmitted Infections (CONCASIDA), held in San José, Costa Rica, from 9 to 14 November 2009.

21. Mr. Brillantes represented the Committee at the second session of the Human Rights Council's Forum on Minority Issues, which was held in Geneva from 12 to 13 November 2009, and which focused on effective political participation.

22. Chairperson El Jamri represented the Committee at the Permanent Forum of Arab-African Dialogue on Democracy and Human Rights which took place in Cairo from 7 to 9 December 2009.

23. Chairperson El Jamri participated in a number of civil society initiatives, such as the seminar "What future for international governance of migration?" organized by the International Federation of Human Rights on 14 December 2009, and the regional conference on "Migration and violence against women in Europe" organized by the Inter-Parliamentary Union on 10 and 11 December 2009.

24. On 18 December 2009, Chairperson El Jamri issued a joint statement with Special Rapporteur on the human rights of migrants on the occasion of International Migrants Day.

J. Adoption of the report

25. On 21 October 2009, Chairperson El Jamri presented the Committee's annual report concerning its ninth and tenth session to the Third Committee of the General Assembly.

26. At its 136th meeting (twelfth session), the Committee adopted its annual report to the General Assembly.

II. Cooperation with bodies concerned

27. The Committee continued its cooperation with United Nations specialized agencies, intergovernmental organizations and non-governmental organizations. It welcomed their contributions in relation to the consideration of States parties' reports.

28. The Committee in particular expresses its appreciation for the active support of its work by ILO, which assists the Committee in a consultative capacity, in accordance with article 74, paragraph 5, of the Convention.

III. Reports by States parties under article 73 of the Convention

29. The Committee notes with concern that many initial reports from States parties under article 73 of the Convention have not yet been received. Annex III to the present report contains a table showing the dates by which the reports of States parties should be submitted. Committee members have met informally with member States of the regional groups of Latin America and the Caribbean and of Africa in order to encourage them to present their reports.

IV. Consideration of reports by States parties in accordance with article 74 of the Convention

30. **Algeria**

(1) The Committee considered the initial report of the Algeria (CMW/C/DZA/1) at its 128th and 129th meetings (CMW/C/SR.128 and 129), held on 26 and 27 April 2010, and adopted at its 136th meeting, held on 30 April 2010, the following concluding observations.

A. Introduction

(2) The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report, as well as the replies to the list of issues. The Committee also welcomes the constructive and fruitful dialogue initiated with a competent delegation.

(3) The Committee recognizes that Algeria is a country of origin, transit and destination for migrant workers.

(4) The Committee notes that many of the countries in which Algerian migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

(5) The Committee is pleased to note that, according to article 132 of the Constitution, international treaties, including the Convention, take precedence over national law.

(6) The Committee welcomes the recent establishment of the Consultative Council of National Community Abroad with the objective of allowing the State party to better take into account concerns of national communities living abroad.

(7) The Committee welcomes the suppression of exit visa, as stipulated in Law No. 08-11 of 25 June 2008 concerning the conditions of entry, stay and circulation on migrants in Algeria.

(8) The Committee also welcomes the conclusion by the State party of bilateral and multilateral agreements, at the regional and international level, in so far as they promote sound, equitable and humane conditions of migration.

(9) The Committee welcomes the State party's recent adherence to the following instruments:

(a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2003;

(b) Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography in 2009 and 2006, respectively.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

(10) The Committee notes that Algeria has not yet ratified the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

(11) The Committee invites the State party to consider acceding to ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

Data collection

(12) The Committee regrets the lack of data and statistics on migration flows, including with regard to the population of irregular migrant workers. The Committee recalls that such information is crucial to assessing the situation of migrant workers and developing adequate measures for the implementation of the Convention.

(13) The Committee strongly encourages the State party to improve its collection of data on migration, which should be appropriately disaggregated (including by sex, age and origin), with a view to assessing and monitoring the situation of migrant workers in Algeria, including those who are in an irregular situation, and the implementation the rights set out in the Convention.

Training in and dissemination of the Convention

(14) While taking note of information provided on efforts to raise awareness of international human rights standards, including in the training of members of the judiciary, the Committee noted the absence of information on more specific measures to ensure that migrant workers are informed about their rights under the Convention.

(15) The Committee encourages the State party to:

(a) Strengthen and expand its training programmes to include all officials working in the area of migration, including members of the judiciary and social workers;

(b) Ensure access by migrant workers to information about their rights under the Convention; and

(c) Work with civil society organizations in order to promote and disseminate information on the Convention.

2. General principles (arts. 7 and 83)

Right to an effective remedy

(16) The Committee notes the information provided that the competent organs of the State party have not received any complaints in relation to violations of the rights of migrant workers. However, the Committee is concerned that the lack of cases on record is reflective of the difficulties faced by migrant workers and members of their families, particularly those in an irregular situation, in seeking redress for violations of their human rights.

(17) The Committee urges the State party to ensure that migrant workers and members of their families, including those in an irregular situation, enjoy the same rights as nationals of the State party, in law and in practice, to file complaints about violations of their human rights and have access to redress mechanisms before the courts.

3. Human rights of all migrant workers and members of their families (arts. 8-35)

(18) The Committee is generally concerned about the association of irregular migration with criminality and the use of the term "illegal migrants" rather than migrants in a "non-documented" or an "irregular situation", which is the terminology used in the Convention. In this regard, the Committee is concerned that a considerable number of migrant workers in the State party are non-documented and that their irregular migration status is considered a criminal offence punishable by imprisonment and/or fines under Law No. 08-11 of 25 June 2008.

(19) The Committee is concerned that migrant workers in an irregular situation in the State party do not effectively enjoy a range of the rights guaranteed to all

migrant workers under the Convention, including rights relating to conditions of work and terms of employment (art. 25), the right to join trade unions and associations (art. 26), the right to social security (art. 27) and the right to medical care (art. 28).

(20) The Committee considers of particular concern the situation of women migrant workers and children of migrant workers in an irregular situation. While taking note of the information provided by the State party that there are no obstacles for the registration of births and access to education for children of migrant workers in an irregular situation, the Committee is concerned that children may not be able to effectively enjoy such basic rights as their parents seek to avoid contact with public authorities from fear of sanctions and expulsion. The Committee is concerned that the lack of data on the situation of irregular migrants, including with regard to school enrolment of their children, may prevent the State party from effectively assess and address the problems faced by them and their families.

(21) **The Committee urges the State party to take all necessary measures to ensure that migrant workers and their families are not deprived of any of the rights under the Convention which apply to all migrant workers, including those in an irregular situation. In particular, the Committee urges the State party to bring its legislation — which criminalizes irregular migration — into conformity with the Convention.**

(22) While noting the information provided by the State party that Law No. 08-11 provides for a right of appeal in the case of expulsion of an irregular migrant worker, the Committee is concerned that in the same law the right to appeal is not guaranteed in cases where expulsion orders are issued by walis (governors). Moreover, while noting the assurances of the State party delegation that adequate safeguards are in place against collective expulsions of migrant workers, the Committee regrets that the State party did not provide any response regarding reports alleging several cases of collective expulsion of sub-Saharan migrants.

(23) **The Committee recommends that the State party takes the necessary measures to establish a legal framework which regulates expulsion/deportation procedures in accordance with articles 22 and 23 of the Convention; in particular, the person concerned shall have the right to submit the reasons why he or she should not be expelled and to have his or her case reviewed by a competent authority. The Committee also recommends that the State party ensures the enjoyment of rights arising out of post-employment, especially relating to the settlement of claims for wages and other entitlements, and that migrant workers who are expelled have sufficient time to file complaints in this regard. Furthermore, the Committee recommends that the State party investigate the alleged cases of collective expulsion of sub-Saharan migrants, prosecute those responsible and take effective measures to provide redress to the victims and to avoid such expulsions in the future.**

(24) The Committee takes note of information in relation to article 42 of the 2010 Finance Law adopted by the State party which allows for the definitive expropriation of abandoned property. While noting the explanation of the State party's delegation that this provision does not apply to expelled migrant workers and the delegation's views with regard to the non-retroactivity of the Convention, the Committee is concerned that the application of this provision could result in the

expropriation of the legitimate property of expelled migrant workers, including the Moroccan migrant workers expelled from the State party in the past.

(25) **The Committee recommends that the State party take all necessary measures to restitute the legitimate property of expelled migrant workers, including the Moroccan migrant workers expelled in the past, or to provide them with fair and adequate compensation in conformity with article 15 of the Convention.**

(26) The Committee is concerned that irregular migrant workers awaiting deportation may be deprived of their liberty for prolonged periods and that detention orders may, in principle, be extended indefinitely.

(27) **The Committee recommends that the State party take steps to ensure that the detention of migrant workers in an irregular situation is only a measure of last resort and that, in all circumstances, such detention is carried out in conformity with articles 16 and 17 of the Convention.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

(28) While noting the information provided by the State party that migrant workers in a regular situation are able to form their own associations, the Committee is concerned that the law governing the right to form trade unions is not in conformity with article 40 of the Convention in that it excludes migrant workers from the right to form trade unions. Moreover, while noting that migrant workers in a regular situation are able to join trade unions, the Committee is concerned that, in practice, there has been no known case of any involvement by a migrant worker in trade union activities in Algeria.

(29) **The Committee recommends the State party to amend its legislation governing the right to form trade unions and to ensure in practice the right of migrant workers in a regular situation to form trade unions, in conformity with article 40 of the Convention.**

(30) The Committee is concerned that migrant workers cannot benefit from social housing, which is reserved for Algerian nationals.

(31) **The Committee encourages the State party to ensure that regular migrant workers enjoy equality of treatment with nationals of the State of employment in particular in relation to access to housing, including social housing schemes, in conformity with article 43, paragraph 1 (d).**

(32) The Committee is concerned that the regulations governing family reunification for migrant workers, under Act No. 81-10, apply only to the spouse.

(33) **The Committee recommends that the State party ensures that the rules governing family reunification are in line with articles 4 and 44 of the Convention.**

(34) The Committee has received information that several former Moroccan migrant workers continues to be separated from their families following their collective expulsion in the past.

(35) **The Committee recommends that the State party takes appropriate measures to facilitate the reunification of those Moroccan migrant workers with their families who remained in Algeria.**

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

(36) While noting that a range of State institutions deal with the issue of migration, including the National Employment Agency, the labour inspectorate and the *wilaya* employment offices, the Committee regrets the lack of sufficient information on the coordination and effective interaction of those bodies.

(37) **The Committee recommends that the State party continue its efforts to coordinate its entities working on migration issues in order to ensure their effectiveness.**

(38) The Committee is concerned that the legislation that criminalizes trafficking in persons for the purposes of labour and sexual exploitation does not explicitly provide for protection of victims of trafficking. Moreover, it notes the lack of specific support services available for such victims.

(39) **The Committee urges the State party to ensure that legislation and measures to prevent and eliminate trafficking provide for adequate protection of and assistance to victims of trafficking. In particular, in line with the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1), the State party should ensure that:**

(a) **Trafficked persons are given access to primary health care and counselling; that safe and adequate shelter that meets the needs of trafficked persons is made available;**

(b) **Trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality;**

(c) **Legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being; and**

(d) **Trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims.**

(40) The Committee is concerned that a new law on amendments to the Criminal Code criminalizes attempts of to emigrating in an irregular manner.

(41) **The Committee recommends that the State party reconsider the proposal that criminalizes the attempt of prospective migrants to leave the national territory in an irregular manner and to ensure that the new law is in conformity with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.**

6. Follow-up and dissemination

Follow-up

(42) The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and legislature, as well as administrative and other relevant authorities.

(43) The Committee regrets the limited involvement of non-governmental organizations (NGOs) and other civil society organizations in the preparation of the present report and encourages the State party to take all the necessary measures to ensure the involvement of civil society organizations in the implementation of the Convention and the preparation of the State party's second periodic report.

Dissemination

(44) The Committee likewise requests that the State party disseminate these concluding observations widely, including to public agencies and the judiciary, NGOs and other members of civil society, and to take steps to make them known to Algerian migrant workers abroad and foreign migrant workers residing or in transit in Algeria.

7. Next periodic report

(45) The Committee invites the State party to submit its common core document in accordance with the 2006 harmonized guidelines for the preparation of a common core document (HRI/MC/2006/3 and HRI/MC/2006/3/Corr.1).

(46) The Committee notes that the State party's second periodic report is due on 1 August 2011. In the circumstances, the Committee requests that the State party submit its second periodic report not later than 1 May 2012.

31. Sri Lanka

(1) The Committee considered the initial report of Sri Lanka (CMW/C/LKA/1) at its 119th and 120th meetings (see CMW/C/SR.119 and 120), held on 12 and 13 October 2009, and adopted at its 125th meeting, held on 15 October, the following concluding observations.

A. Introduction

(2) The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues. The Committee appreciates the constructive and fruitful dialogue with a competent, high-level delegation, which built on the report and the written responses to the list of issues by giving more specific information on questions of both a legal and practical nature concerning the implementation of the Convention.

(3) The Committee recognizes that Sri Lanka is mainly a country of origin, with a large number of migrant workers overseas.

(4) The Committee notes the fact that many of the countries employing Sri Lankan migrant workers are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

(5) The Committee notes with appreciation the State party's commitment to migrant workers' rights, as illustrated by the national constitutional, legislative, judicial, and administrative frameworks that include several institutional mechanisms.

(6) The Committee welcomes the State party's recognition of the importance of labour migration issues and the establishment in 2007 of the new Ministry for Foreign Employment Promotion and Welfare.

(7) The Committee also welcomes the adoption in 2008 of a National Labour Migration Policy for Sri Lanka, elaborated with technical assistance from the International Labour Organization (ILO), and looks forward to receiving information in the State party's next report on the impact of this policy on the rights of migrant workers and their families.

(8) The Committee notes with appreciation the State party's active role in the regional consultative processes on the management of overseas employment and contractual labour for countries of origin in Asia, including the Colombo process and the Abu Dhabi dialogue.

(9) The Committee also notes with appreciation the active role that the State party is playing at the international level to promote the ratification of the Convention by countries of origin, transit and destination.

(10) The Committee further welcomes the recent ratification of, or accession to, the following instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;

(b) The United Nations Convention against Transnational Organized Crime of 2000;

(c) The Vienna Convention on Consular Relations of 1963; and

(d) ILO Convention No. 105 (1957) on the Abolition of Forced Labour.

C. Principal subjects of concern, suggestions and recommendations

(11) The Committee notes with interest the initiatives and programmes undertaken by the State party, including, inter alia, training programmes by the Sri Lanka Bureau for Foreign Employment (SLBFE) for registered migrants prior to departure, the establishment of eight pilot regional migrant information and service desks, measures to facilitate the transfer of migrant workers' earnings and savings, the creation of a "welfare fund" and the operation of an insurance scheme and a pension scheme for registered migrant workers, the provision of scholarships to children of migrant workers and the conducting of a nationwide Anti-Illegal Recruitment

Programme, in order to protect the rights of migrant workers and their families. The Committee regrets, however, the lack of information on these programmes and is concerned that, in practice, awareness and implementation of some of these programmes may be inadequate.

(12) **The Committee recommends that the State party take effective measures to improve the visibility and implementation of these programmes in consultation with migrants' groups, relevant international specialised agencies and other stakeholders.**

1. General measures of implementation (arts. 73 and 84)

Legislation and application

(13) The Committee notes the State party's indication that existing legislation provides many of the standards and guarantees of the Convention and that a mapping exercise is being carried out in the framework of the development of the National Action Plan for the Promotion and Protection of Human Rights in order to identify the changes that will need to be made to national law in order to bring it into line with international standards. However, the Committee regrets that the State party has not taken any measures to ensure that its legislation is in conformity with the Convention.

(14) **The Committee encourages the State party to take all necessary measures for prompt harmonization of its legislation with the provisions of the Convention.**

(15) The Committee notes that Sri Lanka has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

(16) **The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.**

(17) The Committee notes that the State party has not yet ratified ILO Convention No. 97 (1949) on Migration for Employment (Revised) or Convention No. 143 (1975) on Migrant Workers (Supplementary Provisions).

(18) **The Committee invites the State party to accelerate consideration of ratification of ILO Conventions No. 97 and No. 143 as soon as possible.**

(19) The Committee notes that the State party has signed but not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

(20) **In the light of the importance of the Protocols to the effective implementation of the provisions of the Convention, including those contained in article 68, the Committee recommends that the State party proceed to ratify the Protocols as soon as possible.**

Data collection

(21) The Committee notes with interest the statistics provided by the State party on Sri Lankan migrant workers abroad and persons prosecuted for illegally recruiting

Sri Lankan migrant workers. However, the Committee notes with regret that little information is provided by the State party with regard to foreign migrant workers in its territory or Sri Lankans who have migrated abroad irregularly.

(22) **The Committee recalls that reliable, quality information is indispensable to understand the situation of migrant workers in the State party, to assess the implementation of the Convention and to develop adequate policies and programmes. In this regard, the Committee encourages the State party to:**

(a) **Adopt a harmonized mechanism for gathering sex and nationality disaggregated statistics on foreign migrant workers in Sri Lanka and on Sri Lankan irregular migrants working abroad, including through studies or estimated assessments when information is insufficient; and**

(b) **Strengthen collaboration with Sri Lankan embassies and consulates, as well as host countries receiving Sri Lankan migrants, to improve data collection, in particular with regard to irregular Sri Lankan migrants.**

Training in and dissemination of the Convention

(23) The Committee notes with interest that the Sri Lanka Bureau for Foreign Employment highlights provisions of the Convention during its programmes and in other forums. However, the Committee remains concerned that not all the provisions of the Convention are publicized and that there are no specific training programmes on the Convention for relevant public officials, including border police officers, embassy and consulate workers, social workers, judges, prosecutors and relevant Government officials. The Committee also regrets that the Convention has not been translated into the national languages.

(24) **The Committee encourages the State party to:**

(a) **Carry out specific training programmes on the Convention for relevant public officials working in the area of migration, including border police officers, consular officials, social workers, judges and prosecutors;**

(b) **Ensure that training and programmes for migrant workers and their families address all provisions of the Convention; and**

(c) **Translate the Convention into the national languages in order to ensure that it is accessible to the general public.**

2. General principles (arts. 7 and 83)

Non-discrimination

(25) The Committee notes with appreciation that most provisions of the Sri Lankan Constitution apply to all persons on Sri Lankan territory. However, the Committee expresses concern that the rights provided under articles 12(2) and 14 of the Constitution, which guarantee respectively protection against discrimination and the right of peaceful assembly, freedom of association and freedom to form and join a trade union, apply only to citizens.

(26) **The Committee recommends that the State party take the necessary steps to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the**

Convention without any discrimination in conformity with article 7 of the Convention.

3. Human rights of all migrant workers and members of their families (arts. 8-35)

(27) The Committee recalls the concern of the Committee on Cultural, Economic and Social Rights (E/C.12/1/Add.24, para. 13) that hundreds of thousands of Sri Lankan women were working abroad as domestic helpers and many of them underpaid and treated as virtual slaves. While noting the information provided by the State party with regard to the development of standard approved contracts and minimum average salaries for migrant domestic workers, the Committee remains concerned at reports of physical and sexual abuse of female migrant workers, particularly by employers in the host countries, but also by airport personnel prior to departure.

(28) **The Committee urges the State party to focus efforts on promoting the enhancement and empowerment of migrant women facing situations of vulnerability by inter alia:**

(a) **Continuing its efforts to negotiate more secure employment opportunities and terms and conditions for women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent;**

(b) **Carrying out gender training and sensitization for Government staff dealing with migration issues, in particular those providing legal and consular assistance to Sri Lankan nationals abroad seeking justice against abuse in the workplace; and**

(c) **Taking measures to ensure the safety of migrant workers in the international airport prior to departure, including gender and sensitization training for airport personnel and monitoring and investigation of all complaints of abuse or violence against migrant workers.**

(29) The Committee welcomes the appointment of labour welfare officers to serve abroad as representatives of the Sri Lanka Bureau for Foreign Employment. While the Committee notes with appreciation that Labour Welfare Officers receive training in a number of areas prior to deployment, including counselling, conflict management and welfare assistance, it regrets that only some consulates and embassies are equipped with legal assistance desks managed by host country lawyers and that labour welfare officers do not consistently receive training to ensure adequate knowledge of the local language and of the labour laws of the receiving country.

(30) **The Committee encourages the State party to take measures to ensure that its Labour Welfare Officers are knowledgeable about the labour laws and procedures of the countries to which they are deployed, and that legal assistance is available for migrant workers in all embassies and consulates of the State party.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

(31) The Committee notes with regret that while the guarantee of freedom of association and the right to form a trade union is provided for under article 14 of the Sri Lankan Constitution, this right is limited to citizens and does not extend to migrant workers.

(32) **The Committee recommends that the State party take the necessary measures to guarantee to all migrant workers and members of their families lawfully residing within Sri Lanka the right to form, and to form part of the leadership of, associations and trade unions, in accordance with article 40 of the Convention on Migrant Workers, as well as with ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise.**

(33) While taking note of the constraints, as explained by the State party, regarding the facilitation of participation in elections of Sri Lankan migrants working abroad, the Committee is nevertheless concerned that Sri Lankans working abroad are unable to exercise their right to vote in elections in their country of origin.

(34) **The Committee encourages the State party to expeditiously take all necessary steps to ensure that Sri Lankan migrants working abroad have the possibility to register and participate in elections.**

(35) The Committee notes that remittances by Sri Lankan migrant workers are a significant component of the State party's economy and that various measures have been adopted by the State party to facilitate the transfer of migrant workers' earnings and savings. The Committee also notes that, in addition to formal remittances, large sums of money are sent through informal channels, often due to high transaction costs.

(36) **The Committee recommends that the State party conduct a study involving all stakeholders, including migrants, financial services providers and policymakers, in order to gain a better understanding of the patterns of remittance flows, volumes and the motivations for using informal channels to send remittances. The Committee further recommends that the State party create links between banks, financial institutions, non-governmental institutions and microfinance institutions in order to facilitate formal remittances by increasing and strengthening the availability and outreach of channels and products through which migrant workers can send remittances.**

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

(37) The Committee notes with interest that the National Action Plan for the Promotion and Protection of Human Rights being developed by the State party will focus on, inter alia, migration issues, including trafficking, irregular migration, strengthening protection of migrants, voting rights of migrants, training and awareness, as well as the situation of migrants workers in Sri Lanka. The Committee welcomes the State party's information that civil society is involved in the drafting and development of this National Action Plan. However, the Committee notes that the National Action Plan is still in the drafting stages and not expected to be launched until the beginning of 2010, and that there is no indication as to the form that protection of migrant workers' rights will take in the final document.

(38) **The Committee urges the State party to ensure that the National Action Plan takes into account the Committee's concerns and recommendations expressed in these concluding observations, as well as those of civil society. The Committee recommends that the State party take measures to ensure that the National Action Plan for the Promotion and Protection of Human Rights be adopted without delay so that it can be launched at the earliest possible date.**

(39) The Committee notes with interest the Memoranda of Understanding and bilateral agreements entered into with major labour receiving countries, the State party's compulsory registration scheme requiring registration prior to departure for foreign employment, as well as the requirement that service contracts be signed in the presence of SLBFE officers and that service contracts be approved by Sri Lankan missions overseas, among other measures taken by the State party to safeguard the rights of migrant workers. However, the Committee remains concerned at reports of abuse and ill-treatment of Sri Lankan migrant workers in the host countries, including sexual and physical violence, threats, work in degrading conditions, overly long working hours, insufficient food, no medical care, illegally low salaries, withheld pay and forced overtime.

(40) **The Committee recommends that the State party:**

(a) **Continue its efforts to negotiate bilateral agreements on labour migration with major labour-receiving countries in order to secure protection of the rights of migrant workers and to progressively and verifiably mainstream relevant and appropriate provisions of the Convention into these agreements;**

(b) **Strengthen collaboration of the State party's consular services and Labour Welfare Officers abroad and the countries which receive Sri Lanka workers to promote sound, equitable, humane and lawful conditions for migrant workers; and**

(c) **Take steps to further improve the services provided to migrant workers by embassies and consulates of the State party including through the provision of legal assistance as a routine matter and the provision of psychosocial counselling.**

(41) While noting that social protection and insurance programmes are conducted by receiving Governments in a number of countries and that the aspect of social security is included in some memoranda of understanding between the State party and host countries, the Committee notes with regret information provided by the State party that it has no social security agreements with the States of employment of Sri Lankan migrant workers and that Sri Lankan migrant workers cannot claim pensions and other social security benefits from receiving countries in which they have worked, with the exception of Italy and Cyprus.

(42) **The Committee encourages the State party to consider negotiating social security agreements with receiving and sending countries, thus allowing migrant workers and members of their families to receive social security benefits from the country in which they worked when applicable.**

(43) The Committee welcomes the establishment by the State party of policy guidelines for the recruitment of migrant workers. The Committee also welcomes the recent amendments made to the Sri Lanka Bureau of Foreign Employment Act

aimed, inter alia, at penalizing recruitment agencies that charge exorbitant fees. Nevertheless, the Committee is concerned at reports that some recruitment agencies or agents still engage in exploitative or abusive practices, particularly once the migrant workers have arrived in the host country.

(44) **The Committee recommends that the State party take all necessary measures to ensure that the guidelines for recruitment of migrant workers are respected by the recruiting agencies and agents both in Sri Lanka and in the receiving countries. The Committee urges the State party to strictly monitor the activities of recruitment agencies in order to ensure that the rights of migrant workers and prospective migrant workers are protected both in the State party and after their arrival in the host country.**

(45) The Committee notes that the State party is planning, in cooperation with the International Organization for Migration, an organized system to monitor and record returning migrant workers. The Committee also notes with interest that a Reintegration Programme for returning migrant workers has been formulated by the SLBFE which aims to facilitate the reintegration of returnees into the mainstream of society by, inter alia, addressing the psychosocial and economic needs of both the returnees and their families. However, the Committee regrets the absence of detailed information available to the Committee on this programme.

(46) **The Committee recommends that the State party:**

(a) **Take steps to raise awareness of returning migrant workers and their families about the Reintegration Programme;**

(b) **Allocate sufficient funds to the Reintegration Programme; and**

(c) **Consider setting up local institutional mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.**

(47) While the Committee notes that the State party has concluded readmission agreements with the European Union (EU) and with Switzerland and that it is in the process of drafting implementing protocol agreements with a number of EU Governments, it is concerned that these agreements may not include procedural guarantees for the migrants they cover.

(48) **The Committee recommends that the State party, taking into account article 22 of the Convention, ensure that current and future readmission agreements and protocol agreements concluded between Sri Lanka and host countries include appropriate procedural guarantees for migrants.**

(49) While the Committee takes note of the State party's indication that a number of studies have been carried out on the subject, it regrets that no information has been provided by the State party on the impact of migration on children in Sri Lanka.

(50) **The Committee encourages the State party to analyse, and to carry out new studies if necessary, on the impact of migration on children, with the aim of developing adequate strategies to ensure the protection and the full enjoyment by children of migrant workers of their rights.**

(51) The Committee notes that new legislation in the area of immigration and emigration law has been adopted in order to deter human smuggling and illegal

migration. However, the Committee regrets that little or no information has been provided by the State party on the phenomena of human trafficking and human smuggling. The Committee also notes with concern that those who irregularly leave or enter Sri Lankan territory are penalized for the crime of "illegal migration".

(52) **The Committee recommends that the State party:**

(a) **Take steps to ensure implementation of legislation to prevent human trafficking and smuggling of persons;**

(b) **Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data with a view to better combating trafficking in persons, especially women and children; and**

(c) **Take steps to ensure that those responsible for trafficking or smuggling of human beings are brought to justice and appropriately sanctioned, while at the same time ensuring that migrants are not penalized for having irregularly migrated.**

6. Follow-up and dissemination

Follow-up

(53) The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to all relevant national and local authorities.

(54) The Committee encourages the State party to involve civil society organizations in the preparation of the State party's second report.

Dissemination

(55) The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Sri Lankan migrants abroad and foreign migrant workers residing or in transit in the Sri Lanka.

7. Next periodic report

(56) The Committee notes that the State party's second periodic report was due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 November 2011.

Annex I

States that have signed, ratified or acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as at 31 March 2010

State	*Signature*	*Ratification, accession[a], succession[b]*
Albania		5 June 2007[a]
Algeria		21 April 2005[a]
Argentina	10 August 2004	23 February 2007
Azerbaijan		11 January 1999[a]
Bangladesh	7 October 1998	
Belize		14 November 2001[a]
Benin	15 September 2005	
Bolivia (Plurinational State of)		16 October 2000[a]
Bosnia and Herzegovina		13 December 1996[a]
Burkina Faso	16 November 2001	26 November 2003
Cambodia	27 September 2004	
Cape Verde		16 September 1997[a]
Chile	24 September 1993	21 March 2005
Colombia		24 May 1995[a]
Comoros	22 September 2000	
Congo	29 September 2008	
Ecuador		5 February 2002[a]
Egypt		19 February 1993[a]
El Salvador	13 September 2002	14 March 2003
Gabon	15 December 2004	
Ghana	7 September 2000	7 September 2000
Guatemala	7 September 2000	14 March 2003*
Guinea		7 September 2000[a]
Guinea-Bissau	12 September 2000	
Guyana	15 September 2005	
Honduras		9 August 2005[a]
Indonesia	22 September 2004	
Jamaica	25 September 2008	25 September 2008
Kyrgyzstan		29 September 2003[a]
Lesotho	24 September 2004	16 September 2005
Liberia	22 September 2004	
Libyan Arab Jamahiriya		18 June 2004[a]
Mali		5 June 2003[a]
Mauritania		22 January 2007[a]

State	Signature	Ratification accession[a] succession[c]
Mexico	22 May 1991	8 March 1999**
Montenegro	23 October 2006[b]	
Morocco	15 August 1991	21 June 1993
Nicaragua		26 October 2005[a]
Niger		18 March 2009[a]
Nigeria		27 July 2009[a]
Paraguay	13 September 2000	23 September 2008
Peru	22 September 2004	14 September 2005
Philippines	15 November 1993	5 July 1995
Rwanda		15 December 2008[a]
Sao Tome and Principe	6 September 2000	
Senegal		9 June 1999[a]
Serbia	11 November 2004	
Seychelles		15 December 1994[a]
Sierra Leone	15 September 2000	
Sri Lanka		11 March 1996[a]
Syrian Arab Republic		2 June 2005[a]
Tajikistan	7 September 2000	8 January 2002
Timor-Leste		30 January 2004[a]
Togo	15 November 2001	
Turkey	13 January 1999	27 September 2004
Uganda	14 November 1995[a]	
Uruguay		15 February 2001[a]

* On 18 September 2007, Guatemala made the declaration recognizing the Committee's competence under articles 76 and 77 of the Convention.

** On 15 September 2008, Mexico made the declaration recognizing the Committee's competence under article 77 of the Convention.

Annex II

Membership of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Name of the member	*Country of nationality*	*Term expires on 31 December*
Mr. Francisco **Alba**	Mexico	2011
Mr. José Serrano **Brillantes**	Philippines	2013
Mr. Francisco **Carrion Mena**	Ecuador	2011
Ms. Ana Elizabeth **Cubias Medina**	El Salvador	2011
Ms. Fatoumata Abdourhamana **Dicko**	Mali	2013
Mr. Ahmed Hassan **El-Borai**	Egypt	2011
Mr. Abdelhamid **El Jamri**	Morocco	2011
Mr. Miguel Ángel **Ibarra Gonzalez**	Guatemala	2013
Mr. Prasad **Kariyawasam**	Sri Lanka	2013
Ms. Myriam **Poussi**	Burkina Faso	2011
Mr. Mehmet **Sevim**	Turkey	2013
Ms. Andrea **Miller-Stennett**	Jamaica	2013
Mr. Azad **Taghizade**	Azerbaijan	2011
Mr. Ahmadou **Tall**	Senegal	2013

Composition of the Bureau

Chairperson:	Abdelhamid **El Jamri**
Vice-Chairpersons:	José **Brillantes** Ana Elizabeth **Cubias Medina** Azad **Taghizade**
Rapporteur:	Ahmed Hassan **El-Borai**

Annex III

Submission of reports by States parties under article 73 of the Convention as at 1 May 2010

State party	*Type of report*	*Date due*	*Received*
Albania	Initial	1 October 2008	
Algeria	Initial	1 August 2006	3 June 2008
Argentina	Initial	1 June 2008	2 February 2010
Azerbaijan	Second periodic	1 May 2011	
Belize	Initial	1 July 2004	
Bolivia (Plurinational State of)	Second periodic	1 July 2009	
Bosnia and Herzegovina	Second periodic	1 May 2011	
Burkina Faso	Initial	1 March 2005	
Cape Verde	Initial	1 July 2004	
Chile	Initial	1 July 2006	9 February 2010
Colombia	Second periodic	1 May 2011	
Ecuador	Second periodic	1 July 2009	
Egypt	Second periodic	1 July 2009	
El Salvador	Second periodic	1 December 2010	
Ghana	Initial	1 July 2004	
Guatemala	Initial	1 July 2004	8 March 2010
Guinea	Initial	1 July 2004	
Honduras	Initial	1 December 2006	
Jamaica	Initial	1 January 2010	
Kyrgyzstan	Initial	1 January 2005	
Lesotho	Initial	1 January 2007	
Libyan Arab Jamahiriya	Initial	1 October 2005	
Mali	Second periodic	1 October 2009	
Mauritania	Initial	1 May 2008	
Mexico	Second periodic	1 July 2009	4 December 2009
Morocco	Initial	1 July 2004	
Nicaragua	Initial	1 February 2007	
Niger	Initial	1 July 2010	
Nigeria	Initial	1 November 2010	
Paraguay	Initial	1 January 2010	
Peru	Initial	1 January 2007	
Philippines	Second periodic	1 May 2011	

State party	*Type of report*	*Date due*	*Received*
Rwanda	Initial	1 April 2010	
Senegal	Initial	1 July 2004	
Seychelles	Initial	1 July 2004	
Sri Lanka	Initial	1 July 2004	21 April 2008
Syrian Arab Republic	Second periodic	1 October 2011	
Tajikistan	Initial	1 July 2004	
Timor-Leste	Initial	1 May 2005	
Turkey	Initial	1 January 2006	
Uganda	Initial	1 July 2004	
Uruguay	Initial	1 July 2004	

Annex IV

List of documents issued or to be issued in connection with the eleventh and twelfth sessions of the Committee

CMW/C/11/1	Provisional agenda and annotations (eleventh session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families)
CMW/C/SR.118-126	Summary records of the eleventh session of the Committee
CMW/C/12/1	Provisional agenda and annotations (twelfth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families)
CMW/C/SR.127-136	Summary records of the twelfth session of the Committee
CMW/C/LKA/1	Initial report of Sri Lanka
CMW/C/LKA/Q/1	List of issues: Sri Lanka
CMW/C/LKA/Q/1/Add.1	Written replies from the Government of Sri Lanka to the list of issues
CMW/C/LKA/CO/1	Concluding observations of the Committee on the initial report by Sri Lanka
CMW/C/DZA/1	Initial report of Algeria
CMW/C/DZA/Q/1	List of issues: Algeria
CMW/C/DZA/Q/1/Add.1	Written replies from the Government of Algeria to the list of issues
CMW/C/DZA/CO/1	Concluding observations of the Committee on the initial report by Algeria

Annex V

Report of the day of general discussion on migrant domestic workers

I. Introduction

1. On 14 October 2009, the Committee on Migrant Workers held a day of general discussion on the topic of migrant domestic workers. The day aimed, inter alia, at providing input specific to domestic workers who are migrants to the debate at the ninety-ninth session of the International Labour Conference in 2010 which will discuss "Decent Work for Domestic Workers" and consider the adoption of a new International Labour Organization (ILO) instrument on domestic workers by 2011. More generally, the Committee intended to promote greater awareness of the particular situation and rights of migrant domestic workers, including at such international forums as the Global Forum on Migration and Development.

2. The day of discussion was attended by around 50 participants, the majority from civil society groups, national (from Bahrain, Israel, Italy, Lebanon, Netherlands and Senegal), regional (Africa, Asia) and international. International organizations and representatives from permanent missions to the United Nations Office at Geneva also participated.

3. Written reports for the day of discussion were solicited by the Committee and submitted in advance from civil society groups in Cameroon, Costa Rica, El Salvador, Israel, Italy, Lebanon, Malaysia, Netherlands, Nigeria and Philippines, and were posted on the Committee's webpage.

4. The following panellists made presentations during the morning of the day of general discussion (in speaking order):

- Abdelhamid **El Jamri**, Chairperson of the Committee
- Bacre **Ndiaye**, Director, Human Rights Council and Treaties Division, Office of the High Commissioner on Human Rights (OHCHR)
- Manuela **Tomei**, Chief of TRAVAIL, ILO
- Martina **Liebsch**, Advocacy Coordinator for Migration, Trafficking and Gender, Caritas Internationalis
- Lucie **Detsi**, Associazioni Cristiane Lavoratori Italiani Colf (Italy)
- Ana Elizabeth **Cubias**, member of the Committee
- Ibrahim **Salama**, Chief, Human Rights Treaties Branch, OHCHR
- Violet **Awori**, member of the Committee on the Elimination of Discrimination against Women
- Katerine **Landuyt**, NORMES, ILO

5. The participants divided into two working groups in the afternoon. The first working group on recruitment and employment of migrant domestic workers was chaired by the Committee's vice-chairperson José Brillantes; its rapporteur was John Bingham from the International Catholic Migration Commission. The second working Group on effective protection of migrant domestic workers was chaired by

the Committee's vice-chairperson Anamaría Dieguez; its rapporteur was Martina Liebsch from Caritas Internationalis.

6. The present report groups the discussions under specific themes and does not attribute ideas or comments to specific participants.

II. Main points raised by the panel presentations

7. Panellists raised several issues related to the protection of rights of migrant domestic workers. One of the main factors rendering it difficult to protect the rights of migrant domestic workers was that domestic work was broadly not perceived as real work, and was thus almost universally excluded from labour legislation and regulations and bypassed by labour inspections. Migrant domestic workers suffered discrimination, not only because they belonged to a group with low status in society but also because they were non-nationals. Often they were engaged in irregular work without a contract; employers did not usually pay social security contributions for their workers and sometimes salaries were withheld. Conditions of work were often difficult, with excessively long working hours. The irregular migration status of many migrant domestic workers made them more vulnerable to abuse, including sexual abuse. Employers very often confiscated the identity documents of migrant domestic workers. It was remarked that women, who constituted the majority of migrant domestic workers, were all the more vulnerable to abuse and often had no access to justice or other forms of assistance. It was also observed that migrant domestic workers filled a gap in modern society that had not yet been filled by the so-called "work-life balance" approach.

8. Panellists outlined the relevance of the existing international human rights and labour instruments for migrant domestic workers. First of all, it was recalled that, across the board and as a general rule, basic international human rights standards applied to migrants, including irregular migrants. States had an obligation to protect the human rights of domestic migrant workers, regardless of their immigration status or lack of documents. In their review of reports by States parties, multiple United Nations treaty bodies, in particular the Committee on the Elimination of Discrimination against Women and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, have issued recommendations to States on the situation of migrant domestic workers. Moreover, the special procedures of the Human Rights Council, including the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, had paid attention to their plight. Although there were no ILO standards specifically covering migrant domestic workers, most existing ILO instruments were applicable to them, unless otherwise specified. The most relevant among those were the fundamental ILO conventions, related to freedom of association and collective bargaining, forced labour, non-discrimination and child labour. The fundamental ILO conventions applied also to workers in an irregular situation. ILO Conventions Nos. 97 and 143 on migrant workers also applied fully to migrant domestic workers.

9. With regard to the ILO process aiming to develop an international instrument dealing with domestic workers, it was explained that the 2010 International Labour Conference would discuss the issue, following consultations among ILO stakeholders. Several possibilities existed: a convention, a recommendation, a convention supplemented by a recommendation, or a convention with binding and

non-binding parts. The instrument would cover all domestic workers, whether engaged full-time or part-time, with a single employer or with multiple employers, irrespective of nationality, and whether in documented or non-documented status.

10. The text of the panel contributions can be found on the Committee's webpage: http://www2.ohchr.org/english/bodies/cmw/dgd141009.htm.

III. Summary of the discussion of the first working group on recruitment and employment of migrant domestic workers

11. The working group on recruitment and employment of migrant domestic workers focused on the period prior to departure up until the point-of-arrival for international migrants engaged in domestic work.

12. Many participants reiterated the point made by several members of the panel in the morning that including domestic work in national labour codes would ensure that every aspect of domestic work in which migrants engaged, including recruitment processes, would fall under the purview of the law and Governments.

13. Participants discussed the practice of recruitment agencies in many countries of levying exorbitant fees on the migrant domestic worker, not providing any written contract or forcing the worker to sign a different, disadvantageous contract upon arrival. Only in very few cases did protective bilateral agreements between Governments and standard binding recruitment contracts exist.

14. Participants also emphasized the importance of regularizing the market for domestic labour, especially in Europe where domestic work and recruitment of domestic workers mainly occurred through informal channels. In some regions of the world, recruitment of domestic workers was at times governed by cultural practices, whereby young girls from poor, rural areas are offered food and shelter in exchange for their labour.

15. A representative from Singapore shared the country's practices and experiences in the area of monitoring recruitment of migrant domestic workers. In Singapore, all recruitment agencies were required to register with the Government and must be accredited within one year of having opened. In addition, Singapore had elaborated a "de-merit" system for recruitment agencies: if an agency accumulated a certain number of de-merits it was forcibly shut down by the Government. The position of each agency on the de-merit scale was posted on a special website to encourage employers to utilize recruitment agencies with a good track record and avoid those with a high number of de-merits.

16. Concerns were raised about the implications for immigration legislation of the kafalah system, whereby an employee's legal status in a destination country is dependent on the kafil (sponsor).

17. Lack of awareness of rights, both among migrant domestic workers and employers, was also raised as a matter of concern. In that connection, the point was raised that many employers who hired migrant domestic workers, especially the elderly and the disabled, did not have the financial resources to pay decent wages or to provide adequate conditions.

18. Several challenges were identified, such as how to monitor the recruitment and employment of migrant domestic workers outside the formal recruitment system;

how to address the recruitment and employment by employers who objectively were unable to provide adequate wages or working and living conditions; and how to confront certain cultural differences in perceptions of domestic work.

IV. Summary of the discussion of the second working group on effective protection of migrant domestic workers

19. Participants, especially from civil society organizations working with domestic migrant workers in Europe, reiterated critical issues brought up during the morning's panel discussions, namely that work in private households was commonly not recognized as work and that, therefore, there was a need to clarify the definition of work in the household. In some of the participants' experience, the fact that workers immigrated from abroad and were often in an irregular migration status made them especially vulnerable to violation of their rights.

20. Drawing on their own experiences, some participants emphasized the importance of including a gender perspective within discussions on the drafting of a new ILO instrument. A gender perspective would aid in understanding how the migration cycle, abuses and their consequences were different for women.

21. Discrimination faced by migrant domestic workers throughout the migration cycle was highlighted, including discrimination against women (in particular pregnant women), visa restrictions and mandatory testing for HIV/AIDS with consequent deportation or refused entry. Concerning the restrictions on travel visas, participants commented that this often led migrants to look for alternative ways and contributed to trafficking.

22. Another difficulty identified was not so much the lack of labour laws and regulations but rather the lack of enforcement of laws and mechanisms that existed even outside of labour law per se, such as the impossibility for migrant domestic workers to enforce basic contracts and access adequate remedy mechanisms. All participants agreed that having a clear employment relationship was crucial and that contracts were one important element, but the challenge of how to obtain terms of contract that were meaningful and understood by both parties remained. Participants referred to the model contract of ILO and shared experiences with regard to drafting labour contracts, highlighting the work of the steering committee involved in drafting a unified contract in Lebanon. Ensuring access to labour contracts was recognized as a way of empowering migrant domestic workers.

23. Representatives from organizations working in the Middle East singled out the negative effects of having work permits attached to employers (kafalah) and said that this practice increased migrant domestic workers' vulnerability to exploitation by employers.

24. On the subject of recruitment agencies, it was generally agreed that these agencies tended to exploit migrant domestic workers. Based on experience, some participants were not only concerned about the role of recruitment agencies sending domestic workers abroad, but also about labour brokers within a country, who in most cases tended to disregard basic human rights. However, the case of the Czech system of labour brokers in Belgium was cited as a good experience.

25. On efficient complaint mechanisms, some participants observed that labour inspection offices were not available everywhere; that most migrant domestic

workers did now know to whom to address their labour problems and, even if they did, were reluctant to go to the police or the labour authorities out of fear of deportation.

26. Some participants considered that not enjoying the right to social security or not having a social safety net were factors that increased the vulnerability of migrant domestic workers to trafficking. Participants were also concerned by the situation of migrant domestic workers in the diplomatic circle, which was often an invisible one.

27. Some good practices identified were advocacy and dissemination of knowledge on legislation and rights through theatre. Efforts to achieve regularization of migrant domestic workers often faced many difficulties, as migrants campaigning for their regularization risked being deported. Some participants spoke from experiences where temporary programmes of work and temporary visas had served to prepare for regularization, with some participants identifying those programmes as good practice if they included inherent follow-up mechanisms: involvement of consular authorities, labour inspections by an identified authority, control of labour and health, inter alia. It was mentioned that, in the agricultural sector, existing programmes had given positive results which could be replicated in other areas. However, there was not enough evidence of good practice with respect to regularization.

28. Concerning protection programmes, participants cited examples from their own experience including the provision of temporary shelters for migrant domestic workers who wished to leave an abusive employer, ensuring that travel documents and identity documents belonging to migrant domestic workers were not confiscated by employers, and policies and programmes for worker safety and security, including respect for the principle of non-refoulement. The creation of a domestic workers' ombudsman was also suggested.

29. The development of a new ILO instrument on migrant workers was found to be of significant value even for non-ratifying countries, inasmuch as it would serve as a reference instrument, on which national regulations could be based. Moreover, it could be used in conjunction with existing relevant instruments, notably the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, for which advocacy work promoting ratification needed to continue.

30. Finally, participants stressed the importance of continuing to work together with migrant domestic workers in order to find adequate solutions. They underlined the need to understand the regional specificities of migration and learn from the difficulties faced when empowering and protecting people.

V. Recommendations

A. General

(1) Legal channels for migration must be modified and/or opened to more realistically match actual demand, deployment, movement and vulnerabilities of migrant domestic workers.

(2) Using a gender perspective will facilitate understanding the specificities and gender-based discrimination that migrant domestic workers face throughout the migration process including, related to pregnancy, travel bans and restrictions, and mandatory HIV/AIDS testing.

B. Need to raise awareness

(3) States — both those that promote emigration of nationals for work abroad and those that depend on immigrant labour — must support awareness-raising that recognizes domestic work as work and domestic workers as human beings with fundamental human and labour rights. Public education campaigns should focus on the broad rights and risks of migrant domestic workers.

(4) For workers considering migrating for domestic work, more in-depth awareness-raising should include:

(a) Information on the different types and arrangements for domestic work;

(b) Reports on actual country and employment conditions;

(c) Basic knowledge of applicable national and transnational legal frameworks;

(d) Essential perspectives on:

(i) Migration-related fees and debt;

(ii) The effects on family, e.g., separation, right to family visits or return, pregnancy during employment, etc.;

(iii) Other risks of migrating and domestic work;

(e) Basic rights with respect to:

(i) Recruitment and employment agencies or other brokers;

(ii) Employer-employee contexts and actual employment.

C. The importance of better training and preparation

(5) Governments must require recruitment agencies to provide free pre-departure training and preparation for workers who have made the decision to migrate for domestic work. Such training should cover, in every case:

(a) Basic language training;

(b) Essentials of the law and culture of countries of employment;

(c) Types of work, including key job skills where appropriate;

(d) "Know your rights" curricula, under both international and national frameworks, using the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as reference;

(e) "Protect your rights" training, including on issues of migration and work-related fees, debt and finance and basic methods of conflict resolution;

(f) Emergency contact information and procedures;

(g) Proper medical checks and counselling.

(6) Governments should provide mandatory training for agencies and brokers engaged in the process of deploying migrant domestic workers, whether in countries of origin, transit or employment. Such training should cover, at a minimum:

(a) Laws and limits on agency/broker fees, disclosure and training requirements;

(b) Recording and reporting responsibilities, including complaints by workers regarding employers, access to justice, etc.;

(c) Methods of conflict resolution and grievance procedures that are protection-sensitive to workers exposed or subject to abuse or exploitation.

(7) For employers, mandatory training should include:

(a) "Know your obligations" information, under both international and national human rights and labour law, as well as under valid employment contracts;

(b) Basic cultural sensitization, where appropriate;

(c) Methods or procedures for conflict resolution.

D. Regulations and licences

(8) States of origin whose national policy encourages the movement of large numbers of nationals out of the country for domestic work should recognize their responsibility for the recruitment process. Likewise, States of employment of large numbers of migrant domestic workers should recognize their responsibility for the recruitment process.

(9) States have a role in effectively controlling labour brokers and recruitment agencies and ensure that they contribute to the protection of rights of domestic workers. Agencies engaged in the movement of migrant domestic workers, whether in countries of origin, transit or employment, must be subject to formal, regular, transparent and State-regulated:

(a) Licensing, possibly involving processes of accreditation;

(b) Monitoring, inspection and evaluation;

(c) Sanctions and penalties;

(d) Systems of recording and reporting, including web-based formats that are widely and easily accessible to the public, with particular attention to:

(i) Fees and other charges to the workers;

(ii) Financial and other arrangements with other agencies, brokers, employers and Government officials or institutions;

(iii) Instances of complaints and conflicts involving workers.

(10) States of origin and employment should ensure:

(a) Protection-sensitive and transparent frameworks and agreements, including bilateral agreements between States;

(b) The use of standard, unified and binding employment contracts, with fair, full and clear conditions and labour standards enforceable — and enforced — by systems of law in countries both of origin and employment;

(c) Regular and public reporting of migrant domestic worker flows, employment, rights issues, training and other programmes, and issues of justice administration.

E. Employment

(11) The rights of migrant domestic workers should be dealt with within the larger framework of decent work of domestic workers. Domestic work should be recognized as work, and thus be afforded the same protection as other types of work.

(12) The new ILO instrument should clearly define and create different categories for the activities undertaken by domestic workers in households and their specificities, such as household service, care work, full-time, live-in, part-time and live-out work, among others. It should include specific reference to the situation of migrant domestic workers.

(13) States should ensure that a specific contract exists and is enforceable, or in its absence that the existence of an employment relationship can be easily established, that labour inspections take place and, specifically within the scope of the new ILO instrument, that migrant domestic workers' contracts should neither tie workers to one employer nor should their legal status be tied to the employer.

(14) States should ensure that travel documents and identity documents belonging to migrant domestic workers are not confiscated by employers.

(15) States should criminalize the exploitation of migrant children for domestic work.

F. Protection

(16) States of employment should identify a relevant judicial authority to which domestic workers can address their labour rights' concerns, independently of their legal status, such as a domestic workers Ombudsman. Moreover, migrant domestic workers, including those in an irregular status, should be able to access the courts and other justice mechanisms without fear of being deported as a consequence.

(17) The right to collective organizing and action is essential for migrant domestic workers to express their needs and defend their rights, in particular within trade unions and labour organizations. The laws of countries of employment of migrant domestic workers should recognize their right to collective organizing, regardless of migration status.

(18) Consulates of countries of origin that are present in countries in which migrant domestic workers are employed, must develop and/or strengthen mechanisms for:

(a) Receiving, recording and reporting information that can be included back home for awareness-raising, training and licensing programmes, regarding:

(i) Actual country and employment conditions;

(ii) The on-the-ground effects of national and transnational legal frameworks;

(iii) The experience of migrant domestic workers with respect to their migration, including travel and arrival, migration-related fees and debt, the

effects on family, workplace conflicts, issues of rights and access to justice and other risks of migrating and domestic work;

(b) Independent worker counselling.

(19) Regularization programmes could be explored as the surest and most appropriate rule-of-law way of providing protection to migrant domestic workers in an irregular situation.

Annex VI

States parties that submitted comments on the concluding observations adopted by the Committee

During the reporting period, the Committee received comments from Algeria on the concluding observations that the Committee adopted at its twelfth session in relation to the initial report submitted by Algeria (CMW/C/DZA/CO/1). The comments are available on the webpage of the Committee: http://www2.ohchr.org/english/bodies/cmw/cmws12.htm.

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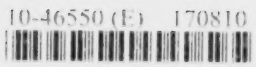

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